

REMARKS

Claim 1 has been amended. Support for the amendment to claim 1 is found on page 2, lines 6-7 of the specification.

Claims 1, 5-7 and 10 are rejected under 35 USC 103(a) as being unpatentable over Chevreux (US 4,717,739).

Claim 1, as amended now, sets forth the composition is a hair treatment composition. This limitation breathes life and meaning to the claims, as noted, *inter alia*, *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 866, 228 USPQ 90, 92 (Fed. Cir. 1985) ("Although it appears in the preambles of the '012 patent claims, the term "anaerobic" breathes life and meaning to the claims and, hence, is a necessary limitation to them.") Thus, this limitation must be taken into consideration when evaluating the prior art.

None of the references cited by the examiner (Chen et al., Mori et al., and Yamamoto et al.) teach nor suggest a hair treatment composition comprising the components stated in claim 1. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

There must also be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. MPEP § 2143.

It is the object of the present invention to provide hair-treatment compositions which have high propellant gas compatibility and essentially do not show a flaking effect. They impart smoothness and suppleness to the hair (specification, pg. 4, lines

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31-35). The good propellant compatibility of the polymers used in hair-treatment compositions according to the invention is demonstrated by the n-heptane compatibility test (specification page 31, line 42 to page 32, line 2). As shown in table 4 (page 32) polymers without components c), d), and e) (=comparative example C5, page 30, table 2, line 7) and polymers without components d) and e) (=comparative example C5, page 30, table 2, line 8) show a markedly reduced n-heptane compatibility. Also shown in table 4 the polymers according to the invention (examples 9-20) have an improved elasticity and smoothness in comparison to polymers C4-C8.

Chevreur (US 4,717,739) concerns radiation curable adhesive compositions suitable for use as an adhesive for bonding glass. There is no motivation for a person of ordinary skill in the art to choose such compositions to improve a hair treatment composition.

Chen (WO97/00664) refers to an aqueous nail polish composition containing highly branched, partially crosslinked aqueous acrylic resins with difunctional acrylated urethane oligomers. As already stated by the examiner in the office action dated September 10, 2002, page 5, last paragraph, page 6, first paragraph, the critical features of a nail polish are gloss, hydrophobicity and the glass transition temperature of the composition. The critical features of the hair treatment compositions of the invention are propellant gas compatibility and the effect on the hair treated with the composition (no flaking effect, smoothness and elasticity of the hair). There is also no motivation for a person skilled in the art to choose a nail polish as starting point to improve upon a hair treatment composition.

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The Mori reference (JP 213221) does not describe polymers on the basis of tert-butyl (meth)acrylate. Further, Mori does not teach to use the compounds in amounts that correspond to the compositions of the invention. So for example, Mori teaches to use (meth)acrylate esters (component c) in an amount of from 30 to 70% by weight (and not 1 to 20% by wieght, see Mori, page 2, line 10). There is also no incentive in the Yamamoto reference to modify the teaching of Mori to produce the claimed invention.

For the reasons expressed above, it is urged that the prior art references cited by the examiner either singly or in combination fail to anticipate or suggest the present invention as defined by the amended claims. Accordingly, a *prima facie* case of obviousness has not been established by the examiner, and the rejection under 35 USC § 103 should be withdrawn.

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Respectfully submitted,
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